



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 61 and 63

[EPA-R01-OAR-2017-0641; FRL-9979-67-Region 1]

**Approval of the Clean Air Act Section 112(l), Authority for Hazardous Air Pollutants:
Asbestos Management and Control; Clerical Corrections to Incorporation by Reference of
Inactive Waste Disposal Rules; State of New Hampshire Department of Environmental
Services**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is granting the New Hampshire Department of Environmental Services (NH DES) the authority to implement and enforce the amended Asbestos Management and Control Rule in place of the National Emission Standard for Asbestos (Asbestos NESHAP) as it applies to certain asbestos-related activities. NH DES's amended rule applies to all sources that otherwise would be regulated by the Asbestos NESHAP with the exception of inactive waste disposal sites that ceased operation on or before July 9, 1981. These inactive waste disposal sites are already regulated by State rules that were approved by the EPA on January 11, 2013. This approval makes NH DES's amended Asbestos Management and Control Rule federally enforceable. In addition, EPA is correcting clerical errors in our regulations that incorporate by reference New Hampshire rules regulating inactive waste disposal sites. This action is being taken in accordance with the Clean Air Act.

DATES: This rule is effective on **[Insert date 30 days after date of publication in the Federal Register]**. The incorporation by reference of certain publications listed in the rule is

approved by the Director of the Federal Register as of [Insert date 30 days from date of publication in the Federal Register].

ADDRESSES: The EPA has established a docket for this action under Docket Identification No. EPA-R01-OAR-2017-0641. All documents in the docket are listed on the <https://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available at <https://www.regulations.gov> or at the U.S. Environmental Protection Agency, EPA Region 1 Office, Office of Ecosystem Protection, Air Permits, Toxics and Indoor Programs Unit, 5 Post Office Square - Suite 100, Boston, MA. The EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Susan Lancey, Air Permits, Toxics, and Indoor Programs Unit, U.S. Environmental Protection Agency, EPA Region 1 Office, 5 Post Office Square - Suite 100, (Mail code OEP05-2), Boston, MA 02109-3912, telephone number 617-918-1656, lancey.susan@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

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I. Background and Purpose

On March 26, 2018 (83 FR 12917), the EPA published a Notice of Proposed Rulemaking (NPRM) that proposed approval of NH DES's amended rules in Env-A 1800, "Asbestos Management and Control," effective as of May 5, 2017, as a partial rule substitution for the Asbestos NESHAP, for all sources in New Hampshire except for inactive waste disposal sites not operated after July 9, 1981.

Under CAA section 112(l), the EPA may approve state or local rules or programs to be implemented and enforced in place of certain otherwise applicable Federal rules, emissions standards, or requirements. The Federal regulations governing EPA's approval of state and local rules or programs under section 112(l) are located at 40 CFR part 63, subpart E. *See* 58 FR 62262 (November 26, 1993), as amended by 65 FR 55810 (September 14, 2000). Under these regulations, a state air pollution control agency has the option to request EPA's approval to substitute a state rule for the applicable Federal rule (*e.g.*, the National Emission Standards for Hazardous Air Pollutants). Upon approval by the EPA, the state agency is authorized to implement and enforce its rule in place of the Federal rule, and the state rule becomes federally enforceable in that state.

The EPA first promulgated standards to regulate asbestos emissions on April 6, 1973. *See* 38 FR 8826. These standards have since been amended several times and re-codified in 40 CFR

part 61, subpart M, “National Emission Standard for Asbestos” (Asbestos NESHAP). On January 11, 2013, the EPA approved the New Hampshire regulation Env-A 1800 titled “Asbestos Management and Control” (Asbestos Management and Control Rule) as a rule adjustment for the Asbestos NESHAP, applicable to all sources in New Hampshire except for inactive waste disposal sites not operated after July 9, 1981. *See* 78 FR 2333.¹ These inactive disposal sites are regulated by other State rules that were also approved by the EPA on January 11, 2013. *See id.*²

In a letter dated July 21, 2017, supplemented on August 21, 2017, September 21, 2017, and March 1, 2018, NH DES requested approval of its amended rules pertaining to asbestos management in New Hampshire. Specifically, NH requested approval of Parts Env-A 1801-1807 and Appendices B, C and D of Env-A 1800 titled “Asbestos Management and Control,”³ effective as of May 5, 2017.

The details of NH’s submission and the rationale for EPA’s proposed action are explained in the NPRM and will not be restated here.

II. Response to Comments

We received a number of anonymous comments on the proposed action that were not germane to the proposal and/or did not specify what changes should be made to our proposed approval of New Hampshire’s Asbestos Management and Control Rule. Many of the comments identified and pertained to issues that are outside the scope of, and do not reference, the proposed action. Therefore, the EPA will not provide any further specific responses to these comments.

¹ The EPA originally approved NH’s Asbestos Management and Control Rule on November 28, 2006, *see* 71 FR 68746, and approved an updated version of the rule on January 11, 2013.

² The EPA originally approved NH’s Inactive Waste Disposal Site Rule on May 28, 2003, *see* 68 FR 31611, and approved an updated version of the rule on January 11, 2013.

³ NH did not request approval of the following provisions 1801.02(e), 1801.07, 1802.02, 1802.04, 1802.07-1802.09, 1802.13, 1802.15-1802.17, 1802.25, 1802.31, 1802.37, 1802.40, 1802.44, and 1803.05-1803.09. In addition, NH DES did not request approval of Env-A 1808 (relating to asbestos analytical requirements), Env-A 1808-1814 (relating to personnel licensing and training), and Appendix A: State Statutes and Federal Regulations Implemented.

The EPA did however receive one comment which could be construed to refer to the proposed approval of New Hampshire's Asbestos Management and Control Rule.

Comment: A single anonymous comment discussed EPA's use of certain data relating to greenhouse gas emissions. In this context, the comment also stated that "The Rule created potentially unduly burdensome requirements [sic] Given the extremely limited pollutant loadings and relative high costs, according to EPA's own analysis, the requirements appear to be ripe for substantial reduction or elimination this [sic] entire subcategory would be excluded by rule given the de minimis amount of pollution."

Response: The EPA believes this comment is not relevant as the proposed action does not use data relating to or regulate greenhouse gas emissions. Read in context, the commenter's reference to "[t]he Rule" appears to refer to a different, unspecified action relating to greenhouse gas emissions. However, to the extent that the reference is to the proposed rule we are finalizing in this action, the EPA disagrees with the comment because this action merely approves the State's requirements in place of Federal requirements and does not impose additional requirements beyond those imposed by state law.

III. Good Cause Finding for Revisions to Certain Regulations that Incorporate By Reference New Hampshire Rules Regulating Inactive Asbestos Disposal Sites Not Operated After July 9, 1981

EPA is also revising certain regulations that incorporate by reference New Hampshire rules regulating inactive asbestos disposal sites not operated after July 9, 1981 ("Inactive Asbestos Disposal Rules").⁴ These revisions are minor, non-substantive clarifications to 40 CFR 63.14(l)(6)(i) and 63.99(a)(30)(iii) and (a)(30)(iii)(A). Therefore, EPA is promulgating these

⁴ These revisions described in this section of the preamble to 40 CFR 63.14(l)(6)(i) and 63.99(a)(30)(iii) and (a)(30)(iii)(A), relating to EPA's incorporation by reference of the previously approved Inactive Asbestos Disposal Rules) are severable from the remainder of this final rule. Should this portion of the rule be set aside, EPA intends for the remainder of the rule to go into effect. Alternatively, should another portion of the rule be set aside, EPA intends for this portion to go into effect.

revisions without notice and comment. Section 553(b)(B) of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that public notice and comment procedures are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for finalizing this portion of the rule without prior proposal and opportunity for comment because such notice and opportunity for comment is unnecessary as these revisions correct minor, non-substantive, clerical errors.

EPA published a direct final rule approving the Inactive Asbestos Disposal Rules on January 11, 2013. *See* 78 FR 2333. We received no adverse comments. That rule correctly incorporated the State's Inactive Asbestos Disposal Rules by reference in both 40 CFR parts 61 and 63. In part 63, EPA codified its approval at 40 CFR 63.99(a)(30)(iii) and (a)(30)(iii)(A), and incorporated the State rule by reference at 40 CFR 63.14(d)(5)(i). Subsequently, on February 27, 2014, EPA, consistent with the then-policy of the Office of Federal Register, published a final rule revising 40 CFR 63.14 "to arrange the materials that are incorporated by reference in alpha-numeric order." *See* 79 FR 11233. As a result, the Inactive Asbestos Disposal Rules were moved from paragraph (d)(5)(i) to paragraph (k)(6). Subsequently, in a rulemaking on September 18, 2015, EPA redesignated paragraph (k) as paragraph (l). *See* 80 FR 56699. These revisions also inadvertently created two clerical errors. First, EPA amended the IBR text, now at 40 CFR 63.14(l)(6), to refer to earlier versions of the State's Inactive Asbestos Disposal Rules, which EPA had approved in prior actions. Second, EPA neglected to amend the text at 40 CFR 63.99(a)(30)(iii), which continues to refer to 40 CFR 63.14(d). This action undoes both inadvertent errors. EPA revises 40 CFR 63.14(l)(6) to refer to the more recent version of the Inactive Asbestos Disposal Rules, and in substance, reverts to the text as originally and correctly promulgated in our 2013 approval. We also update the cross-reference at 40 CFR

63.99(a)(30)(iii) to refer to the correct provision consistent with the re-ordering and redesignating performed in the 2014 and 2015 rules.

Providing notice and comment for these revisions is unnecessary for three reasons. First, as explained above, this is a minor technical correction that simply undoes a subsequent clerical error and reverts the regulatory text back to its original form. Second, this action does not subject any new or existing parties to additional regulation, or otherwise alter the regulatory scheme. The relevant sources in New Hampshire remain subject to the same State Inactive Asbestos Disposal Rules, regardless of this correction. Third, this action does not affect the federal enforceability of the Inactive Asbestos Disposal Rules. Notwithstanding the clerical error introduced in the 2014 update, the Inactive Asbestos Disposal Rules remain federally enforceable under the existing regulations, because they are correctly incorporated by reference under part 61. *See* 40 CFR 61.04(c)(1)(i), 61.18(e)(1)(i). EPA properly promulgated those provisions in our 2013 approval, and they were not altered by the 2014 and 2015 updates that introduced the clerical error into the incorporation by reference in 40 CFR 63.14.

In addition, these revisions make additional, clerical corrections to 40 CFR 63.99(a)(30)(iii) and (a)(30)(iii)(A), to conform to the current policy of the Office of the Federal Register regarding citation format and placement of references. In 40 CFR 63.99(a)(30)(iii), we are changing the phrase “New Hampshire Regulations Applicable to Hazardous Air Pollutants” to “New Hampshire Regulations Chapter Env-Sw 2100: Management and Control of Asbestos Disposal Sites Not Operated after July 9, 1981, effective February 16, 2010.” This duplicates the precise citation to the State’s regulations that is already present in paragraph (a)(30)(iii)(A). We are also changing the phrase “as specified in” to “see.” In 40 CFR 63.99(a)(30)(iii)(A), we are changing the phrase “material incorporated into the New Hampshire Regulations at Env-Sw 2100” to “material incorporated from Chapter Env-Sw 2100.” In addition, we are moving the

reference to the effective date of the Inactive Asbestos Disposal Rules from paragraph (a)(30)(iii)(A) to paragraph (a)(30)(iii). We are also changing the word “pertains” to “pertaining.” See the full regulatory text of these paragraphs later in this notice. In addition, a strikeout display of the revised version against the existing version is provided in the public docket. These revisions have no legal effect, and therefore notice-and-comment is also unnecessary.

IV. Final Action

The EPA is approving NH DES’s amended rules in Parts Env-A 1801-1807 and Appendices B, C, and D of Env-A 1800, “Asbestos Management and Control,” effective as of May 5, 2017 (excluding the following provisions: 1801.02(e), 1801.07, 1802.02, 1802.04, 1802.07-1802.09, 1802.13, 1802.15-1802.17, 1802.25, 1802.31, 1802.37, 1802.40, 1802.44, and 1803.05-1803.09) as a partial rule substitution for the Asbestos NESHAP, for all sources in New Hampshire except for inactive waste disposal sites not operated after July 9, 1981. In addition, the EPA is correcting clerical errors in our regulations that incorporate by reference New Hampshire rules regulating inactive waste disposal sites.

V. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of New Hampshire’s Env-A 1800, “Asbestos Management and Control,” effective as of May 5, 2017, Parts Env-A 1801-1807, Appendices B, C, and D; excluding the following provisions: 1801.02(e), 1801.07, 1802.02, 1802.04, 1802.07-1802.09, 1802.13, 1802.15-1802.17, 1802.25, 1802.31, 1802.37, 1802.40, 1802.44, and 1803.05-1803.09. An attached letter from Clark B. Freise, Assistant Commissioner, Department of Environmental Services, State of New Hampshire, to David J. Alukonis, Interim Director, Office of Legislative Services, dated June 23,

2017, certifies that the copy of the chapter Env-A 1800 is the official version of this rule. The EPA has made, and will continue to make, these documents generally available through <https://www.regulations.gov> and at the EPA Region 1 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator has the authority to approve section 112(l) submissions that comply with the provisions of the Act and applicable Federal regulations. In reviewing section 112(l) submissions, EPA's role is to approve state choices, provided that they meet the criteria and objectives of the CAA and of EPA's implementing regulations. Accordingly, this action merely approves the State's request as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

In addition, this rule is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA. It also does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994). And it does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the EPA is not approving the submitted rule to apply in Indian country located in the State, and because the submitted rule will not impose substantial direct costs on Tribal governments or preempt Tribal law.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **Insert date 60 days after date of publication in the Federal Register**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review, or extend the time within which a petition for judicial review may be filed, or postpone the effectiveness of the action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Parts 61 and 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: September 12, 2018.

Alexandra Dunn,
Regional Administrator,
EPA Region 1.

Title 40 CFR parts 61 and 63 are amended as follows:

PART 61-NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS

1. The authority citation for part 61 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart A – General Provisions

2. Section 61.04 is amended by revising paragraph (c)(1)(ii) to read as follows:

§ 61.04 Address.

(c)* * *

(1)* * *

(ii) The remainder of the sources subject to the asbestos provisions in subpart M of this part, except for those listed under paragraph (c)(1)(i) of this section, must comply with the New Hampshire Code of Administrative Rules: Chapter Env-A 1800, Asbestos Management and Control, effective as of May 5, 2017 as incorporated by reference, see § 61.18.

* * * * *

3. Section 61.18 is amended by revising paragraph (e)(1)(ii) to read as follows:

§ 61.18 Incorporation by reference.

* * * * *

(e) * * *

(1)* * *

(ii) New Hampshire Code of Administrative Rules: Chapter Env-A 1800, Asbestos Management and Control, effective as of May 5, 2017 (certified with June 23, 2017 letter from Clark B. Freise, Assistant Commissioner, Department of Environmental Services, State of New Hampshire), as follows: Revision Notes #1 and #2; Part Env-A 1801 – 1807, excluding Env-A 1801.02(e), Env-A 1801.07, Env-A 1802.02, Env-A 1802.04, Env-A 1802.07-1802.09, Env-A 1802.13, Env-A 1802.15-1802.17, Env-A 1802.25, Env-A 1802.31, Env-A 1802.37, Env-A 1802.40, Env-A 1802.44, and Env-A 1803.05-1803.09; and Appendices B, C, and D; IBR approved for § 61.04(c).

PART 63-NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

4. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart A – General Provisions

5. Section 63.14 is amended by revising paragraph (l)(6) to read as follows:

§ 63.14 Incorporation by reference.

* * * * *

(l)* * *

(6)(i) New Hampshire Regulations at Env-Sw 2100, Management and Control of Asbestos Disposal Sites Not Operated after July 9, 1981, effective February 16, 2010 (including a letter from Thomas S. Burack, Commissioner, Department of Environmental Services, State of New Hampshire, to Carol J. Holahan, Director, Office of Legislative Services, dated February 12, 2010, certifying that the enclosed rule, Env-Sw 2100, is the official version of this rule), IBR approved for § 63.99(a).

(ii) New Hampshire Code of Administrative Rules: Chapter Env-A 1800, Asbestos Management and Control, effective as of May 5, 2017 (certified with June 23, 2017 letter from Clark B. Freise, Assistant Commissioner, Department of Environmental Services, State of New Hampshire), as follows: Revision Notes #1 and #2; Part Env-A 1801 – 1807, excluding Env-A 1801.02(e), Env-A 1801.07, Env-A 1802.02, Env-A 1802.04, Env-A 1802.07-1802.09, Env-A 1802.13, Env-A 1802.15-1802.17, Env-A 1802.25, Env-A 1802.31, Env-A 1802.37, Env-A 1802.40, Env-A 1802.44, and Env-A 1803.05-1803.09; and Appendices B, C, and D; IBR approved for § 63.99(a).

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Subpart E—Approval of State Programs and Delegation of Federal Authorities

6. Section 63.99 is amended by revising paragraphs (a)(30)(iii) and (iv) to read as follows:

§ 63.99 Delegated Federal authorities.

* * * * *

(a) * * *

(30) * * *

(iii) Affected inactive waste disposal sites not operated after July 9, 1981 within New Hampshire must comply with New Hampshire Regulations Chapter Env-Sw 2100: Management and Control of Asbestos Disposal Sites Not Operated after July 9, 1981, effective February 16, 2010 (incorporated by reference, see § 63.14) as described in paragraph (a)(30)(iii)(A) of this section:

(A) The material incorporated by reference from Chapter Env-Sw 2100, Management and Control of Asbestos Disposal Sites Not Operated after July 9, 1981, pertains to inactive waste disposal sites not operated after July 9, 1981 in the State of New Hampshire's jurisdiction, and has been

approved under the procedures in § 63.93 to be implemented and enforced in place of the Federal NESHAPs for Inactive Waste Disposal Sites (40 CFR 61.151).

(B) [Reserved]

(iv) Affected asbestos facilities (i.e., facilities found under 40 CFR part 61, subpart M, except those listed under paragraph (a)(30)(iii) of this section) must comply with the New Hampshire Code of Administrative Rules, Chapter Env-A 1800, Asbestos Management and Control, effective as of May 5, 2017 (incorporated by reference as specified in § 63.14) as described in paragraph (a)(30)(iv)(A) of this section:

(A) The material incorporated by reference from Chapter Env-A 1800, Asbestos Management and Control, pertains to those affected sources in the State of New Hampshire's jurisdiction, and has been approved under the procedures in § 63.93 to be implemented and enforced in place of the federal NESHAPs found at 40 CFR part 61, subpart M (except those listed under paragraph (a)(30)(iii) of this section).

(B) [Reserved]

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